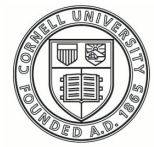

11-14-1986

State of New York Public Employment Relations Board Decisions from November 14, 1986

New York State Public Employment Relations Board

State of New York Public Employment Relations Board Decisions from November 14, 1986

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

TOWN OF HENRIETTA,

Respondent,

-and-

CASE NO. U-8620

LOCAL 1170, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, ROADRUNNERS ASSOCIATION,

Charging Party.

In the Matter of

TOWN OF HENRIETTA,

Respondent,

CASE NOS. U-8750
U-8751 and U-8752

-and-

ROADRUNNERS ASSOCIATION, LOCAL 1170, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO,

Charging Party.

HARRIS, BEACH, WILCOX, RUBIN AND LEVEY, ESQS., (CARL R. KRAUSE, ESQ. of Counsel), for Respondent

ROBERT J. FLAVIN, for Charging Party

BOARD DECISION AND ORDER

These matters come to us on the exceptions of the Town of Henrietta (Town) to the decision of the Director of Public

Employment Practices and Representation (Director) in Case No. U-8620 and the decision of the Administrative Law Judge (ALJ) in Case Nos. U-8750, U-8751 and U-8752.

Based upon the conduct of the Town during the course of these proceedings, both the Director and the ALJ determined it to be appropriate to apply the provisions of Rule §204.3(e)[1/] and deem the failure of the Town to file a timely answer, coupled with its refusal to attend a pre-hearing conference, to constitute an admission of the material facts alleged in the charges filed by Roadrunners Association, Local 1170, Communications Workers of America, AFL-CIO (Local 1170) and a waiver of a hearing. Both determined that on the basis of the facts alleged and thus admitted, the Town violated the Act in several respects.

Case No. U-8620

On March 10, 1986, Local 1170 filed an improper practice charge against the Town alleging that the Town unilaterally changed a long established past practice relating to call out pay. On March 24, 1986, a notice of conference and hearing

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[1/] Section 204.3(e) reads as follows:

> Admission by Failure to Answer. If the respondent fails to file a timely answer, such failure may be deemed by the administrative law judge to constitute an admission of the material facts alleged in the charge and a waiver by the respondent of a hearing.

was mailed. That notice informed the Town that an answer must be filed within ten working days of the receipt of the notice. A conference scheduled for April 16, 1986, in Buffalo was adjourned at the request of the parties. On June 6, 1986, a pre-hearing conference was rescheduled for June 24, 1986, at PERB's offices in Buffalo. The Town was requested to file an answer at the conference since no answer had been filed by the Town.

By letter dated June 17, 1986, the Town advised that it would not attend the pre-hearing conference unless it was held in Rochester or the Town. The letter offered an explanation as to why it had changed the "call out pay" provision but the letter in no respect conformed to the requirements of an answer as set forth in Rule §204.3(a). On June 20, 1986, the ALJ advised the Town that its letter was not an answer and that its failure to file an answer and its failure to attend the pre-hearing conference would likely require application of Rule §204.3(e). On June 24, 1986, the pre-hearing conference was held. The Town did not appear. In a phone conversation with the ALJ, the representative of the Town confirmed that it would not attend the pre-hearing conference unless it was held in Rochester or the Town.

Case Nos. U-8750, U-8751 and U-8752

On May 27, 1986, Local 1170 filed three separate charges against the Town. In U-8750, the charge alleged that the

Town refused written requests for certain information relative to its "policing" of contract provisions relating to out-of-title pay and promotions. In Case U-8751, the charge alleged that the Town's finance director threatened adverse action against an employee who had filed a grievance unless such grievance was withdrawn, and further alleged that such adverse action was thereafter taken because of the refusal to withdraw the grievance. In Case U-8752, the charge alleged that the Town refused a written request for a listing of part-time employees and the hours worked by each per week.

By notice mailed on June 3, 1986, a consolidated pre-hearing conference was scheduled for July 15, 1986, at PERB's Buffalo office. On July 14, 1986, the Town advised that it would not attend the pre-hearing conference unless it was held in the Town or in Rochester. No answer had yet been filed by the Town. On July 15, 1986, the pre-hearing conference was held and the Town did not attend. On July 16, 1986, a letter was received which objected to PERB's procedures and stated the Town's position with respect to the charges as follows:

> With respect to the Union filing unfair labor practice charges:
>
> 1. Case U-8751 - Mrs. Young was not discriminated against. She was transferred as a routine matter. Two other women grieved this same issue and remain in the Town Court.
>
> 2. Case U-8750 - Each employee knows how many hours they've worked out of class. We will not do the Union's bookkeeping.

3. Case U-8752 - The Town does not have a responsibility or obligation to compile a list of part-timers for the Union.

Deeming the material facts alleged in the charges admitted by reason of the Town's failure to file a timely and responsive answer, together with the Town's refusal to attend the pre-hearing conference, the Director and the ALJ determined that the Town had violated the Act in each of the instances alleged in these charges and directed remedial relief.

Exceptions

The Town has filed separate exceptions to each of the two decisions but its contentions are substantially identical in both documents. The Town contends that PERB cannot "command" the Town to appear personally at pre-hearing conferences in Buffalo and that such conduct by PERB was unlawful, violating the Town's rights under State Law and the State and Federal Constitutions. It urges that neither the Taylor Law nor our Rules requires parties to an improper practice proceeding "to appear personally at a pre-hearing conference". It urges that the requirement that the conference be held only in Buffalo was not explained or justified, that the sole purpose of such a conference is for "clarification of the issues" and that this could have been accomplished by telephone conference and that PERB should have avoided the "burdensome" trip from the Town to Buffalo.

The Town contends that the requirement to appear personally in Buffalo amounts to an unwritten rule adopted in violation of the State Administrative Procedure Act. It also contends that compelling the Town to appear in Buffalo violated the Town's rights under the State and Federal Constitutions since such requirement creates a classification which improperly distinguishes between those communities near Buffalo and those not so near.

In its exceptions to the ALJ's decision in Case Nos. U-8750, U-8751 and U-8752, the Town argues, in addition, that the ALJ "overstated" the purposes of a pre-hearing conference. It argues that our Rule §204.6 only refers to "clarification of issues" as the purpose of such a conference and that the Rule makes no mention of settlement as a purpose. It also urges that the ALJ's conclusion that the Town deliberately ignored this Board's procedures is not supported by evidence and that the decision by the ALJ constituted a hypertechnical application of our procedures.

Finally, the Town, in its exceptions, for the first time raises the defense that PERB lacks jurisdiction to consider the charge in Case U-8751 since resolution of this dispute requires an interpretation of the parties' collective bargaining agreement. In its exceptions, it also raises, for the first time, the defense that the allegations in the charge in Case U-8750 do not constitute a violation of the

Act even if true. It asserts that the charge fails to identify the information requested and that it is thus impossible to find that such information was necessary and relevant to Local 1170's administration of the contract.

Discussion

The Town argues that error has been committed because we do not have the authority to "command" it to appear personally at a pre-hearing conference in Buffalo. We do not agree with this characterization of the issue. The real issue presented is not the propriety of a pre-hearing conference in Buffalo but what should be the appropriate consequences of the Town's failure to file a timely answer or, indeed, any proper answer at all, coupled with its refusal to attend any pre-hearing conference unless it is held in Rochester. What we confront in these cases is the Town's refusal to participate, except on its own terms, in our long-established procedures for effectuating our statutory responsibilities to resolve disputes and prevent improper practices.

When this Board adopted its Rules relating to improper practices, the pre-hearing conference was established as a vital part of the procedures. Rule §204.6 mandates that a pre-hearing conference be held in all cases. It is intended to bring the parties together to seek a resolution of the dispute, if possible, through clarification of the issues.

Our statutory responsibility to resolve disputes and "promote harmonious and cooperative relationships" is inherent in everything we do and is always an integral part of our procedures. This is particularly true with regard to the pre-hearing conference. Whether or not specified in the Rules, the search for settlement is implicit in all our endeavors. Thus, we must reject any contention of the Town that settlement is not properly a purpose of the pre-hearing conference because that purpose is not mentioned in Rule §204.6.

Such a purpose obviously requires, in most cases, a face-to-face meeting of the parties. No other method of conferencing can better effectuate the purpose of the pre-hearing conference. Indeed, in our view telephone conference calls, in lieu of face-to-face meetings, should be utilized most sparingly. The Town argues that a telephone conference call would have been sufficient and should have been utilized in this case. In view of the Town's failure to respond to the charges prior to the scheduled conference, the Director and ALJ properly concluded that a telephone conference call would not have assisted in clarifying the issues.

Our improper practice procedures must be and have been administered flexibly. We have been reluctant to dispose of

possibly meritorious positions on formalistic grounds. Nevertheless, our requirement for responsive pleadings cannot be cavalierly ignored. Rule §204.3 requires the answer to include a specific admission, denial or explanation of each allegation of the charge and a specific detailed statement of any affirmative defense. The purposes of the pre-hearing conference and the hearing are substantially furthered by the clarification of the issues that an adequate answer provides. The untimely letters submitted by the Town did not, in our view, comply, even minimally, with the requirements of Rule §204.3.

We have found it necessary, for reasons of economy and administrative efficiency, to pay special attention to the scheduling and location of pre-hearing conferences and hearings. Since, with one exception, our ALJs are based in Albany, we have sought to schedule as many pre-hearing conferences as possible on the same day and at the same location in order to minimize our expenditures and the travel time of the ALJs. We have discouraged the siting of pre-hearing conferences on an individual case basis. At the same time, we have endeavored, where feasible, to accommodate the convenience of the parties, especially in the selection of the site of a hearing. Such factors as the estimated length of the hearing, the number of anticipated witnesses

and the number of issues involved will be considered in the selection of the site of a hearing.

These considerations cannot, and need not, be reduced to formal rules. Nor is our power to carry out our statutory responsibilities dependent on the adoption of formal rules giving ourselves specific permission for every action taken in regard to the scheduling and location of pre-hearing conferences and hearings. Therefore, we reject the Town's contention that we have violated the State Administrative Procedures Act in this regard.

We do not consider it unreasonable, nor an unconstitutional classification of persons, to utilize wherever possible our offices in Buffalo, Albany and New York City for the grouping and siting of pre-hearing conferences. Our records reveal, however, that the ALJs have, on occasion, scheduled pre-hearing conferences at other locations, including Rochester, when, in their judgment, the use of such locations was consistent with the administrative needs of this Board.

The foregoing demonstrates why we must reject the underlying proposition implicit in the Town's arguments, that any party to an improper practice proceeding has the right to insist on a particular location for a pre-hearing conference. Neither the Act nor our Rules nor any judicial

holding of which we are aware grants such a right to parties to our proceedings. Similarly, we reject the suggestion that this Board has the burden of persuading a party as to the appropriateness of the location of a pre-hearing conference before the party is obligated to attend.

We conclude, therefore, that the lateness and inadequacy of the Town's response to the charges filed against it, coupled with its refusal to attend duly scheduled pre-hearing conferences, warranted the application of the provisions of Rule §204.3(e) by the Director and the ALJ. Under these circumstances, it was proper for them to conclude that the Town's conduct constituted "an admission of the material facts alleged in the charge and a waiver by the respondent of a hearing."

Finally, we reject the Town's exceptions addressed to the merits of the charges in Case Nos. U-8751 and U-8750. The Town urges that we lack jurisdiction over the former charge because the matters complained of are governed by the parties' collective bargaining agreement and that the allegations of the latter charge, even if admitted, do not constitute a violation since the charge does not identify the information sought and therefore we cannot determine its relevance and necessity.

Needless to say, neither defense is raised in the letters which constituted the sole response of the Town to

the charges. We reject these defenses on the ground that they were not raised in a timely fashion. Moreover, we would reject them on the merits even if they were timely.

As to Case U-8751, the charge alleges the threat of adverse action if a grievance were not withdrawn and the taking of such action when such grievance was not withdrawn. The collective bargaining agreement between the parties may authorize the action taken if properly motivated, but the agreement cannot be a defense to the allegation of a retaliatory motive. Therefore, the Town's exception in this regard is rejected. As to Case U-8750, the charge alleges that Local 1170 requested information "concerning the 2,000 hour Out-of-Title provision." It also alleges that "In order for the union to police this contractual provision and to fairly represent our members" such information "is imperative to the union". In the absence of any responsive pleading or a motion for particularization (another procedure which the Town failed to utilize - see Rule §204.3(b)), and in light of the Town's refusal to appear at the pre-hearing conference, where more specific information might have been sought and obtained, it ill-behooves the Town to argue now that the charge is insufficiently clear. In any event, we conclude that the charge states a prima facie case which, in the absence of any response, is sufficient to warrant a finding that the Town violated §209-a.1(d) of the Act by refusing the request of Local 1170 for relevant and necessary information.

Accordingly, we affirm the decisions of the Director and the ALJ in these cases.

NOW, THEREFORE, WE ORDER in Case No. U-8620, that the Town of Henrietta:

1. Rescind the call out pay provision put in effect on February 7, 1986 insofar as it affects employees in the unit;

2. Restore the status quo for such unit employees by returning to the call out pay provision that existed prior to February 7, 1986;

3. Make whole any unit employee who suffered any diminution of benefits as a result of the change in the call out pay provision on and after February 7, 1986, together with interest at the maximum amount authorized by law;

4. Negotiate in good faith with Local 1170, Communications Workers of America, AFL-CIO, Roadrunners Association with respect to terms and conditions of employment of unit employees; and

5. Sign and post the attached notice in all locations at which any affected unit employees work or report in places ordinarily used to post notices of information to unit employees.

AND WE ALSO ORDER in Case Nos. U-8750, U-8751 and U-8752 that the Town of Henrietta:

1. Cease and desist from interfering with, restraining, coercing or discriminating against unit employees because of their exercise of rights under the Act;

2. Forthwith reinstate Rudd-Young to the position which she held at the court department prior to her transfer;

3. Negotiate in good faith by providing the Roadrunners Association, Local 1170, Communications Workers of America, AFL-CIO, with the information it requested, which is relevant

to the contractual provisions regarding out-of-title pay and promotions, and with a listing of its part-time employees and the hours worked by each per week;

4. Sign and post the attached notice at all locations at which unit employees work in places ordinarily used to post notices of information to unit employees.

DATED: November 14, 1986
New York, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

Jerome Lefkowitz, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify employees of the Town of Henrietta within the unit represented by Local 1170, Communications Workers of America, AFL-CIO, Roadrunners Association that the Town of Henrietta will:

1. Rescind the call out pay provision put in effect on February 7, 1986 insofar as it affects employees in the unit;

2. Restore the status quo for such unit employees by returning to the call out pay provision that existed prior to February 7, 1986;

3. Make whole any unit employee who suffered any diminution of benefits as a result of the change in the call out pay provision on and after February 7, 1986, together with interest at the maximum amount authorized by law;

4. Negotiate in good faith with Local 1170, Communications Workers of America, AFL-CIO, Roadrunners Association with respect to terms and conditions of employment of unit employees.

Town of Henrietta

.....

Dated..... **By**.....
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

10642

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE
PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE
PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify employees in the unit represented by the Roadrunners Association, Local 1170, Communications Workers of America, AFL-CIO, that the Town of Henrietta:

1. Will not interfere with, restrain, coerce or discriminate against unit employees because of their exercise of rights under the Public Employees' Fair Employment Act;

2. Will forthwith reinstate Rudd-Young to the position which she held at the court department prior to her transfer;

3. Will negotiate in good faith by providing the Roadrunners Association, Local 1170, Communications Workers of America, AFL-CIO, with the information it requested, which is relevant to the contractual provisions regarding out-of-title pay and promotions, and with a listing of its part-time employees and the hours worked by each per week.

Town of Henrietta

Dated..... **By**.....
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of the

TEAMSTERS LOCAL UNION #693 CASE NO. I-0034

to review the implementation of the provisions and procedures enacted by the Delaware County Public Employment Relations Board pursuant to §212 of the Civil Service Law.

JOHN MAIER, III, ESQ., for Petitioner

ROBERT H. McDOWELL, ESQ., Delaware County Attorney, for Respondent Delaware County Public Employment Relations Board

ROEMER & FEATHERSTONHAUGH, P.C., (CLAUDIA R. McKENNA, ESQ., of Counsel), for Intervenor Civil Service Employees Association, Inc.

BOARD DECISION AND ORDER

On May 2, 1986,[1/] Teamsters Local Union #693 (Teamsters) filed a petition with the Delaware County Public Employment Relations Board (Local Board) seeking to decertify Delaware County Unit Local 813 of the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) and to be certified as the collective bargaining representative of certain employees of Delaware County (County). When the Local Board in effect dismissed this petition on the ground that it was barred by a collective bargaining agreement between CSEA

1/Unless otherwise noted, all dates are in 1986.

and the County, the Teamsters, by its Secretary-Treasurer Joseph E. Thompson (Petitioner), filed a petition with this Board on June 6, pursuant to §203.8 of our Rules of Procedure, for review of the Local Board's decision.

Petitioner requests that this Board find that in dismissing the Teamsters' petition, the Local Board did not implement its provisions and procedures in a manner substantially equivalent to the provisions and procedures of this Board as required by Civil Service Law (CSL) §212. Petitioner further requests that this Board retain jurisdiction over this matter and decide the merits of the underlying Teamster representation petition.

Petitioner alleges the following as the particular grounds for annulling the Local Board's decision: (a) The Local Board denied the Teamsters an opportunity to present evidence, information and argument in support of their petition and further denied them an opportunity to rebut allegations made by the County and CSEA. (b) The Local Board's decision was based on information obtained exclusively from County and CSEA representatives at a fact-finding meeting, and the Teamsters were neither invited to participate in this meeting nor advised of it. (c) Only two of the three members of the Local Board were present at that fact-finding meeting and participated in the Local Board's decision. (d) The Local Board's decision does not set forth the requirements for a contract bar or describe how the facts as found establish such a bar to the Teamsters' petition. Petitioner also claims that the County

Attorney has a conflict of interest because he represented the County in the proceedings before the Local Board and now represents the Local Board in this review proceeding.

In addition to filing a petition with us, the Teamsters also commenced an Article 78 proceeding claiming that the Local Board's determination that a contract bar was in effect when they filed their representation petition is arbitrary, capricious and contrary to law. The Petitioner argues that the issue before the Court is different from the issue before this Board and that, therefore, the Teamsters should not be required to choose between the two forums.

This Board conducted an investigation into the issues raised by the Teamsters. In response to our investigation, the Local Board submitted two letters describing the procedure followed, the reasoning employed and the documents considered in arriving at the decision to dismiss the Teamsters' representation petition. The Local Board also filed copies of the documents it considered and directed our attention to its answer in the related Article 78 proceeding. The Teamsters submitted a statement providing details of their claim, supporting documentation and a copy of their Article 78 petition.

CSEA filed a motion to intervene, which was granted on July 21. Subsequently, upon CSEA's request for clarification, we advised the parties that, at least initially, our investigation and decision would be limited to the procedural

improprieties claimed by the Teamsters and would not address the contract bar claim. CSEA then filed a letter addressing the allegations of procedural improprieties.

FACTS

Our investigation revealed no facts in dispute material to our disposition of this proceeding. On May 2, the Teamsters filed a petition with the Local Board, together with supporting authorization cards, seeking to decertify CSEA and to be certified in its place as the bargaining representative of the County's employees in the Department of Social Services, Probation Department, Mental Health Clinic, Alcoholism Clinic, Drug Abuse Services and Social Services Special Investigative Unit.

In reviewing the petition, the Local Board reasoned that if, by May 2, negotiations between the County and CSEA had successfully concluded in a contract, that contract would have the effect of barring the Local Board's consideration of the Teamsters' petition. Based on this reasoning, the Local Board arranged a meeting with representatives of the County and CSEA, who were instructed to bring with them any evidence they might have of the existence of a contract. The Teamsters were not advised of the meeting and were not present at it.

On May 12, Robert R. Phillips and Edward Roberts, respectively Chairman and Member of the Local Board, met with

Richard Grant, the County's Personnel Officer and chief negotiator, and Gerald Phelan, CSEA's chief negotiator. The third member of the Board was not present. The meeting was not conducted as a quasi-judicial proceeding. Rather, the Local Board investigated the negotiation and ratification processes employed by CSEA and the County by discussing these with Grant and Phelan and by reviewing the documents produced by them.

The documents which the County and CSEA contended established a contract included a memorandum entitled "Ground Rules", signed on November 19, 1985; amended provisions of the expired agreement between the County and CSEA initialed on various dates, the latest being April 11; and a letter of understanding between the County and CSEA, initialed April 15. The Local Board determined that while the contract was not in a final typed form, it was in writing and either signed or initialed by Grant and Phelan, who were empowered to negotiate for the County and CSEA.

Regarding its investigation of these parties' ratification of the tentative contract, the Local Board reviewed various documents used by CSEA and the County during their respective ratification procedures. For CSEA, these were "Highlights of Tentative Agreement", "Resolution 90" (containing specific language of some of the contract's provisions) and a "Memorandum of Understanding". The County relied on the same documents, except it utilized a "Summary of CSEA Contract" in

place of the "Highlights of Tentative Agreement". Based on these documents and the information provided by Grant and Phelan at the May 12 meeting, the Local Board determined that the contract had been properly ratified by both CSEA and the County, without challenge.

In a letter to the Teamsters dated May 13, the Local Board held that by May 2, CSEA and the County had

> an agreement containing all the essential elements and procedures required by law and that a contract bar does exist.

The Local Board based its decision on information provided by CSEA and the County exclusively and concedes that it did not provide the Teamsters with an opportunity to present evidence or argument. In its letter of May 13, the Local Board advised the Teamsters that it would not take any further action on their petition. However, following the May 13 decision, the Teamsters submitted an additional twelve authorization cards to the Local Board and then commenced this review proceeding.

DISCUSSION

CSL §212 empowers this Board to ascertain whether provisions and procedures adopted by a local government "and the continuing implementation thereof are substantially equivalent to the provisions and procedures" which this Board must follow (emphasis added). In this regard, we have repeatedly stated that it is not our function to substitute our

judgment for that of the Local Board in reviewing representation proceedings.[2/] We have also said that

> where a local board conducts a proper investigation generating an adequate record upon which it applies the...[relevant law] and its local statutory equivalent, the possibility that this Board would reach a different conclusion on the same facts is not controlling.[3/]

Here, however, the Teamsters challenge more than the ultimate determination of the Local Board; they attack the conduct of the Local Board and the procedures employed by it in reaching its determination.

The rules of both the Local Board and of this Board require an investigation into all questions concerning representation upon the filing of a petition for representation.[4/] It is rudimentary law that the conduct of any such investigation must be fair and include an opportunity for all parties to present relevant evidence and argument and to respond to each others' contentions.[5/] A fair investigation also requires that

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[2/] New York State Nurses Ass'n, 1 PERB §399.93 (1968); Nassau County Correction Officers Benevolent Ass'n, 8 PERB ¶3068 (1975); Committee of Interns and Residents, 12 PERB ¶3012 (1979); George Lessler, 13 PERB ¶3023 (1980).

[3/] George Lessler, 13 PERB ¶3023, at p. 3035 (1980).

[4/] 4 NYCRR §201.9(a)(i).

[5/] Nassau County Correction Officers Benevolent Ass'n, 8 PERB ¶3068 (1975); Local 237, Teamsters, 2 PERB ¶3005 (1969); George Lessler, 13 PERB ¶3023 (1980).

notice and an opportunity to participate in a fact-finding meeting be afforded to all parties. When a local board fails to afford parties such opportunity, it does not investigate the petition before it in a manner substantially equivalent to the investigation required by this Board and is not in a position to apply the relevant law in a legitimate manner.

We find that by denying the Teamsters an opportunity to present evidence and argument the Local Board failed to conduct a fair investigation. In the absence of holding a formal hearing, which we do not mandate by this decision, the Local Board should have advised the Teamsters that they might submit proof in the form of documents and affidavits as well as arguments in response to the contentions of CSEA and the County. Additionally, the Local Board should have advised the Teamsters that they might participate in the May 12 fact-finding meeting. The Local Board's ex parte meeting with the County and CSEA and its reliance for information on CSEA and the County to the exclusion of the Teamsters were improper.

With respect to the County Attorney's role in this matter, there is no evidence that he represented or advised the Local Board at the time it rendered its decision. However, he does now represent the Local Board in the proceeding before us. Based on his submission to us on behalf of the Local Board, it appears that the County Attorney is already aware that it would be improper for him to continue to represent the Local Board

upon remand of this matter. The County will be a party to the proceeding before the Local Board with an interest in the outcome of the proceeding. Clearly, the County Attorney would have a conflict of interest if he represented both the County and the Local Board.

We find nothing improper in the fact that only two of the Local Board's three members participated in the decision in issue. All that is required for a valid decision is that there be agreement by a majority of the board members.[6/]

In view of the foregoing, we hold that the Local Board has not implemented its local provisions and procedures in a manner substantially equivalent to that required by the Taylor Law and this Board's Rules of Procedure and that this matter shall be remanded to the Local Board for investigation and determination in accordance with this decision. Accordingly, we need not address the remaining issues raised by the Teamsters.

NOW, THEREFORE, IT IS ORDERED that the decision and order of the Delaware County Public Employment Relations Board dated May 13, 1986 in its case involving the representation petition filed by Teamsters Local Union #693 on May 2, 1986 is hereby annulled and

IT IS FURTHER ORDERED that this matter be remanded to the Delaware County Public

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6/General Construction Law §41. See Port Authority of New York and New Jersey v. Port Authority Employment Relations Panel, 16 PERB ¶7521 (Sup. Ct. N.Y. Co. 1982).

Employment Relations Board to implement its local provisions and procedures in a manner consistent with the determination herein, and notify this Board within 30 days of the date of this order of the action it has taken to comply with this order. Failure to comply with this order will constitute grounds for the revocation of this Board's approval of the local provisions and procedures adopted by the County of Delaware pursuant to §212 of the Civil Service Law.

DATED: November 14, 1986
New York, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

Jerome Lefkowitz, Member

#3A-11/14/86

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

AVON CENTRAL SCHOOL DISTRICT,

Employer,

- and -

Case No. C-3113

AVON CENTRAL SCHOOL SUPPORT ASSOCIATION, NATIONAL EDUCATION ASSOCIATION OF NEW YORK,

Petitioner.

CERTIFICATION OF REPRESENTATION AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,

IT IS HEREBY CERTIFIED that the Avon Central School Support Association, National Education Association of New York has been designated and selected by a majority of the employees in the above-named public employer, in the unit agreed upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.

Unit: Included: Secretaries, buildings and grounds staff, including part-time cleaners, food service helpers, teacher aides, library aides, registered nurses, copy operators, laborers, and school monitors.

Excluded: Secretary to the Superintendent, head custodian, school tax collector, payroll clerk/ district treasurer, cook managers, and all other employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with the Avon Central School Support Association, National Education Association of New York and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the above unit, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: November 14, 1986
New York, New York

Harold R. Newman, Chairman

Walter L. Eisenberg, Member

Jerome Lefkowitz, Member